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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/597,448	06/20/2000	William S. Gatley	FASV-137-C1	6244

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EXAMINER

CIRIC, LJILJANA V

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 04/06/2004

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/597,448

Applicant(s)

GATLEY, WILLIAM S.

Examiner

Ljiljana (Lil) V. Ciric

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3,5-8 and 10-12 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3, 5-8, 10-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 May 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This Office action is in response to the amendments, arguments, terminal disclaimer, declaration of common ownership under 37 CFR 1.78(c), and response to request for information under 37 CFR 1.105 filed on January 16, 2004.

2. Claims 3, 5 through 8, and 10 through 12, all as amended either directly or indirectly, remain in the application.

Response to Arguments

3. Applicant's arguments, see Paper No. 16, filed on January 16, 2004, with respect to the rejection of the claims under 35 U.S.C. 102(b) as being anticipated by Jyoraku et al. have been fully considered and are persuasive. The rejection of the claims under 35 U.S.C. 102(b) has thus been withdrawn.

Also, applicant's arguments, see Paper No. 16, filed on January 16, 2004, with respect to the rejection of the claims under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2 and 20 of U.S. Patent No. 6,296,478 B1 in view of Connor et al. and over claims 1 through 14 of U.S. Patent No. 6,318,358 B1 have been fully considered and are persuasive. The corresponding rejections of the claims under the judicially created doctrine of obviousness-type double patenting has thus been withdrawn as well.

Oath/Declaration

4. This application presents a claim for subject matter not originally claimed or embraced in the statement of the invention. The amended claims recite various features which, while supported by the originally filed disclosure, were not originally claimed or embraced in the statement of the invention, such as, for example: closely mounting the motor housing to the impeller housing such that cooling air can enter the motor housing only through the at least one vent aperture as now recited in claim 3, drawing

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exhaust gases into the impeller housing from the furnace through an exhaust opening formed in the impeller housing as now also recited in each of base claims 3 and 7. A supplemental oath or declaration is required under 37 CFR 1.67. The new oath or declaration must properly identify the application of which it is to form a part, preferably by application number and filing date in the body of the oath or declaration. See MPEP §§ 602.01 and 602.02.

Response to Request for Information under 37 C.F.R. 1.105

5. Receipt and entry of the response to the request for information under 37 C.F.R. 1.105 is hereby acknowledged.

Specification

6. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: there appears to be no proper antecedent basis in the specification for the inlet port, the exhaust opening, and the exhaust outlet as recited in the claims. Consistency of terminology throughout the application is essential in order to ensure a clear disclosure.

Claim Objections

7. Claims 3, 5 through 8, and 10 through 12 are objected to because of the following informalities for example: “at least one” should be inserted immediately preceding “vent aperture” [claim 3, line 9, and other occurrences] for improved consistency and readability; and, “exhaust opening” [claim 3, line 21] should be replaced with “exhaust gas inlet” or similar for improved clarity and readability [note—make sure that the specification is amended as needed to provide proper antecedent basis for the claim terminology]. Appropriate correction is required.

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Terminal Disclaimer

1. The terminal disclaimer filed on January 16, 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of prior patent 6,231,311 has been reviewed and is accepted. The terminal disclaimer has been recorded.
2. The declaration of common ownership under 37 CFR 1.78(c) by Fasco Industries, Inc., of the instant application and U.S. Patent 6,231,311 at the time of invention of the subject matter of the instant application has been made of record.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(f) he did not himself invent the subject matter sought to be patented.

4. Claims 7, 8, and 10 through 12 are rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter. Stewart (U.S. Patent No. 6,602,058 B1, issued on August 5, 2003) generally discloses and claims an invention of the same scope as the instant invention, albeit using different terminology. Stewart (made of record by applicant's response filed on January 16, 2004 to the request for information under 37 CFR 1.105) claims a blower and a method of using the same in a combustion- or burner-based water heater (i.e., a furnace), including: a motor 19 in a motor housing 10 having a motor shaft 24, the motor housing 10 having at least one vent aperture or inlet 12; the motor housing being mounted or connected to an impeller housing 20, the impeller housing having an inlet port or opening 27; an impeller 50 enclosed within the impeller housing 20 and mounted to the motor shaft 24, the impeller having a back plate 52 and blades 56, the back plate in turn including a plurality of apertures or vents 54 formed in the back plate 52; and, an exhaust opening or exhaust port 22.

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Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 3, 5 through 8, and 10 through 12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 through 15 of U.S. Patent No. 6,602,058 B1 issued to Stewart on August 5, 2003 (made of record by applicant's response filed on January 16, 2004 to the request for information under 37 CFR 1.105). Although the conflicting claims are not identical, they are not patentably distinct from each other because one of the only difference between the scope of the claims of the instant application and those of the patent is in the intended use recitation as cited in the application, with the intended use for the blower as recited in the claims of the instant invention being a furnace whereas the intended use as recited in the claims of the patent being a burner- or combustion-fired water heater, wherein combustion flue or exhaust gases are drawn through the blower along with cooling ambient air, just like in the instant application. Another difference between the invention as claimed in the patent as compared to the invention as claimed in the instant application is that the invention as claimed in the patent claims 2 and 11 requires that the blower housing be made of a polymer material. Nevertheless, Official Notice is taken hereby that making blower housings from polymer materials is well-known in the art and helps to reduce manufacturing and maintenance costs associated with making and using the blower and any system in which the blower is incorporated.

Conclusion

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7. Applicant's submission of an information disclosure statement in the form of a response to a request for information under 37 CFR 1.105 on January 16, 2004 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609(B)(2)(i). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric, whose telephone number is (703) 308-3925.

While she works a flexible schedule that varies from day to day and from week to week, Examiner Ciric may generally be reached at the Office during the work week between the hours of 10 a.m. and 6 p.m. ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel, can be reached on (703) 308-1272. The NEW central official fax phone number is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

lvc

April 4, 2004 .


LJILJANA V. CIRIC
PRIMARY EXAMINER
ART UNIT 3753